

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT & REAL ESTATE SERVICES ADMINISTRATION
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

May 10, 2011

CHANGE NOTICE NO. 2
OF
CONTRACT NO. 071B1300036
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR LogistiCare Solutions, LLC 1800 Phoenix Blvd., Suite #120 College Park, GA 30349 Email: albertc@logisticare.com	TELEPHONE (770) 907-7596 Albert Cortina
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3768 Lance Kingsbury
Contract Compliance Inspector: Penny Saite (517) 335-5096 saitep@michigan.gov Non-Emergency Transportation Services – DCH	
CONTRACT PERIOD: From: October 1, 2010 To: November 30, 2012	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE (S):

Effective immediately, the attached documents are hereby incorporated into this contract.

All other terms, conditions, specifications and pricing remain unchanged.

AUTHORITY/REASON:

Per DTMB/Purchasing Operations approval and Agency and Contractor request.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,190,000.00

LogistiCare Solutions, L.L.C.
Contract 071B1300036
Non-Emergency Transportation Services – DCH
Contract Revisions

Section 1.042 – Reports

Changing from quarterly to monthly reports.

Revise the first sentence to read:

The Contractor must submit accurate and complete reports to MDCH monthly with an annual rollup report.

Section 1.061 – Pricing

Changing to a fixed fee reimbursement with quarterly adjustments and an administrative component.

Revise the first sentence and (a) to read:

For authorized Services, see Attachment A

(a) Fixed Fee Monthly Prepayment Reimbursement with Quarterly Adjustments for Services/Deliverables

Attachment A – Pricing

Revised:

See new Attachment A

Attachment A – Services

Payment under the Contract will consist of a fixed fee reimbursement rate with quarterly adjustments and a percentage of the overall payment for administrative costs

Service	
Lodging:	
1. Any Ronald McDonald House	
2. Other	
Meals:	
1. Meals when staying at a Ronald McDonald	
2. Meals when staying at other subsidized housing	
For day trips and overnight stays/multiple night stays when not in a subsidized facility:	
1. Breakfast	
2. Lunch	
3. Dinner	
Parking Fees/Tolls	
Mileage:	
1. Bus Transportation (City/Intercity)	
2. Personal Vehicle	
3. Volunteer	
4. Commercial, nonprofit agencies, medical facilities, local health departments, taxis, etc.	
Special Transportation Allowances (wheelchair lift/Medivan):	
1. Mileage	
2. Base Rate	
3. Attendant	

The administrative fee for the Contract is based on the Department's estimated annual costs for Non-Emergency Transportation Services for Macomb, Oakland and Wayne Counties.

Calculation Chart					
Estimate Total For All Reimbursements per Year			Rate		Administrative Fee
Year 1	\$5,000,000.00	X	12.10%	=	\$605,000.00
Year 2	\$5,000,000.00	X	11.70%	=	\$585,000.00
Total Two (2) Year Estimated Contract Amount:					\$1,190,000.00

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT & REAL ESTATE SERVICES ADMINISTRATION
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

December 8, 2010

CHANGE NOTICE NO. 1
OF
CONTRACT NO. 071B1300036
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR LogistiCare Solutions, LLC 1800 Phoenix Blvd., Suite #120 College Park, GA 30349 Email: albertc@logisticare.com	TELEPHONE (770) 907-7596 Albert Cortina
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3768 Lance Kingsbury
Contract Compliance Inspector: Penny Saites (517) 335-5096 saitesp@michigan.gov Non-Emergency Transportation Services – DCH	
CONTRACT PERIOD: From: October 1, 2010 To: November 30, 2012	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE (S):

Effective 12/1/2010, the implementation and transition period has been extended one month; no payment will be made to the Contractor during this period. The Contractor must begin providing all Services, without interruption, on January 1, 2011.

All other terms, conditions, specifications and pricing remain unchanged.

AUTHORITY/REASON:

Per DTMB/Purchasing Operations approval and Agency and Contractor request.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,190,000.00

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

October 6, 2010

NOTICE
OF
CONTRACT NO. 071B1300036
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (770) 907-7596
LogistiCare Solutions, LLC 1800 Phoenix Blvd., Suite #120 College Park, GA 30349 Email: albertc@logisticare.com		Albert Cortina
		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-3768 Lance Kingsbury
Contract Compliance Inspector: Penny Saites (517) 335-5096 saitesp@michigan.gov Non-Emergency Transportation Services – DCH		
CONTRACT PERIOD: From: October 1, 2010 To: November 30, 2012		
TERMS	N/A	SHIPMENT
		N/A
F.O.B.	N/A	SHIPPED FROM
		N/A
MINIMUM DELIVERY REQUIREMENTS		
N/A		

The terms and conditions of this Contract are those of RFP #071I0200143, this Contract Agreement and the vendor's quote dated July 9, 2010. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: \$1,190,000.00

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B1300036
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (770) 907-7596
LogistiCare Solutions, LLC 1800 Phoenix Blvd., Suite #120 College Park, GA 30349		Albert Cortina
Email: albertc@logisticare.com		CONTRACTOR NUMBER/MAIL CODE
Contract Compliance Inspector: Penny Saites (517) 335-5096		BUYER/CA (517) 241-3768
Non-Emergency Transportation Services – DCH		
CONTRACT PERIOD:		From: October 1, 2010 To: November 30, 2012
TERMS	N/A	SHIPMENT
F.O.B.	N/A	SHIPPED FROM
MINIMUM DELIVERY REQUIREMENTS		N/A
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are those of RFP #071I0200143, this Contract Agreement and the vendor's quote dated July 9, 2010. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.		
Estimated Contract Value: \$1,190,000.00		

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP No. 071I0200143. Orders for delivery will be issued directly by the Department of Energy, Labor and Economic Growth through the issuance of a Purchase Order Form.

All terms and conditions of the RFP are made a part hereof.

FOR THE CONTRACTOR:	FOR THE STATE:
LogistiCare Solutions, LLC	Signature
Firm Name	Kevin Dunn, Buyer Manager
Authorized Agent Signature	Name/Title
Authorized Agent (Print or Type)	Services Division, Purchasing Operations
Date	Division
	Date



STATE OF MICHIGAN
Department of Technology, Management and Budget
Purchasing Operations

Contract No. 071B1300036

Non-Emergency Medical Transportation Services for Medicaid Beneficiaries
for the Michigan Department of Community Health

Buyer Name: Lance Kingsbury
Telephone Number: 517-241-3768
E-Mail Address: kingsburyl@michigan.gov

Table of Contents

DEFINITIONS	12
Article 1 – Statement of Work (SOW)	18
1.010 Project Identification	18
1.011 Project Request	18
1.012 Background	18
1.020 Scope of Work and Deliverables	18
1.021 In Scope	18
1.022 Work and Deliverable	19
1.030 Roles and Responsibilities	22
1.031 Contractor Staff, Roles, and Responsibilities	22
1.040 Project Plan	23
1.041 Project Plan Management	23
1.042 Reports	24
1.050 Acceptance	25
1.051 Criteria	25
1.052 Final Acceptance – Deleted – N/A	25
1.060 Pricing	25
1.061 Pricing	25
1.062 Price Term	25
1.063 Tax Excluded from Price	26
1.064 Holdback – Deleted – N/A	26
1.070 Additional Requirements	26
1.071 State Staff, Roles and Responsibilities	26
1.072 Other Roles and Responsibilities	26
1.073 Compensation and Payment	26
1.074 Implementation Period	26
Article 2, Terms and Conditions	27
2.000 Contract Structure and Term	27
2.001 Contract Term	27
2.002 Options to Renew	27
2.003 Legal Effect	27
2.004 Attachments & Exhibits	27
2.005 Ordering	27
2.006 Order of Precedence	27
2.007 Headings	27
2.008 Form, Function & Utility	28
2.009 Reformation and Severability	28
2.010 Consents and Approvals	28
2.011 No Waiver of Default	28
2.012 Survival	28
2.020 Contract Administration	28
2.021 Issuing Office	28
2.022 Contract Compliance Inspector	28
2.023 Project Manager	29
2.024 Change Requests	29
2.025 Notices	29
2.026 Binding Commitments	29
2.027 Relationship of the Parties	30
2.028 Covenant of Good Faith	30
2.029 Assignments	30
2.030 General Provisions	30
2.031 Media Releases	30
2.032 Contract Distribution	30
2.033 Permits	30
2.034 Website Incorporation	30
2.035 Future Bidding Preclusion	31
2.036 Freedom of Information	31
2.037 Disaster Recovery	31

2.040	Financial Provisions	31
2.041	Fixed Prices for Services/Deliverables	31
2.042	Adjustments for Reductions in Scope of Services/Deliverables	31
2.043	Services/Deliverables Covered	31
2.044	Invoicing and Payment – In General	31
2.045	Pro-ration	31
2.046	Antitrust Assignment	32
2.047	Final Payment	32
2.048	Electronic Payment Requirement	32
2.050	Taxes	32
2.051	Employment Taxes	32
2.052	Sales and Use Taxes	32
2.060	Contract Management	32
2.061	Contractor Personnel Qualifications	32
2.062	Contractor Key Personnel	32
2.063	Re-assignment of Personnel at the State's Request	33
2.064	Contractor Personnel Location	33
2.065	Contractor Identification	33
2.066	Cooperation with Third Parties	33
2.067	Contractor Return of State Equipment/Resources	34
2.068	Contract Management Responsibilities	34
2.070	Subcontracting by Contractor	34
2.071	Contractor Full Responsibility	34
2.072	State Consent to Delegation	34
2.073	Subcontractor Bound to Contract	34
2.074	Flow Down	34
2.075	Competitive Selection	35
2.080	State Responsibilities	35
2.081	Equipment	35
2.082	Facilities	35
2.090	Security	35
2.091	Background Checks	35
2.092	Security Breach Notification	35
2.093	PCI Data Security Requirements – Deleted N/A	35
2.100	Confidentiality	35
2.101	Confidentiality	35
2.102	Protection and Destruction of Confidential Information	36
2.103	Exclusions	36
2.104	No Implied Rights	36
2.105	Respective Obligations	36
2.110	Records and Inspections	36
2.111	Inspection of Work Performed	37
2.112	Examination of Records	37
2.113	Retention of Records	37
2.114	Audit Resolution	37
2.115	Errors	37
2.120	Warranties	37
2.121	Warranties and Representations	37
2.122	Warranty of Merchantability	39
2.123	Warranty of Fitness for a Particular Purpose	39
2.124	Warranty of Title	39
2.125	Equipment Warranty – Deleted – N/A	39
2.126	Equipment to be New – Deleted – N/A	39
2.127	Prohibited Products – Deleted – N/A	39
2.128	Consequences For Breach	39
2.130	Insurance	39
2.131	Liability Insurance	39
2.132	Subcontractor Insurance Coverage	40
2.133	Certificates of Insurance and Other Requirements	40
2.140	Indemnification	41
2.141	General Indemnification	41

2.142	Code Indemnification	41
2.143	Employee Indemnification.....	41
2.144	Patent/Copyright Infringement Indemnification.....	41
2.145	Continuation of Indemnification Obligations	42
2.146	Indemnification Procedures	42
2.150	Termination/Cancellation	43
2.151	Notice and Right to Cure	43
2.152	Termination for Cause	43
2.153	Termination for Convenience.....	43
2.154	Termination for Non-Appropriation	44
2.155	Termination for Criminal Conviction.....	44
2.156	Termination for Approvals Rescinded.....	44
2.157	Rights and Obligations upon Termination	44
2.158	Reservation of Rights.....	45
2.160	Termination by Contractor	45
2.161	Termination by Contractor	45
2.170	Transition Responsibilities	45
2.171	Contractor Transition Responsibilities	45
2.172	Contractor Personnel Transition	45
2.173	Contractor Information Transition	45
2.174	Contractor Software Transition	46
2.175	Transition Payments	46
2.176	State Transition Responsibilities.....	46
2.180	Stop Work	46
2.181	Stop Work Orders	46
2.182	Cancellation or Expiration of Stop Work Order.....	46
2.183	Allowance of Contractor Costs	46
2.190	Dispute Resolution	46
2.191	In General	47
2.192	Informal Dispute Resolution.....	47
2.193	Injunctive Relief.....	47
2.194	Continued Performance.....	47
2.200	Federal and State Contract Requirements	47
2.201	Nondiscrimination	48
2.202	Unfair Labor Practices	48
2.203	Workplace Safety and Discriminatory Harassment	48
2.204	Prevailing Wage – Deleted – N/A	48
2.210	Governing Law	48
2.211	Governing Law.....	48
2.212	Compliance with Laws	48
2.213	Jurisdiction.....	48
2.220	Limitation of Liability	48
2.221	Limitation of Liability.....	48
2.230	Disclosure Responsibilities	49
2.231	Disclosure of Litigation.....	49
2.232	Call Center Disclosure	49
2.233	Bankruptcy	49
2.240	Performance	50
2.241	Time of Performance	50
2.242	Service Level Agreements (SLAs) – Deleted – N/A	50
2.243	Liquidated Damages – Deleted – N/A	50
2.244	Excusable Failure	50
2.250	Approval of Deliverables.....	51
2.251	Delivery Responsibilities	51
2.252	Delivery of Deliverables	51
2.253	Testing	51
2.254	Approval of Deliverables, In General.....	52
2.255	Process For Approval of Written Deliverables.....	52
2.256	Process for Approval of Services.....	53
2.257	Process for Approval of Physical Deliverables	53
2.258	Final Acceptance	53

2.260	Ownership	53
2.261	Ownership of Work Product by State	53
2.262	Vesting of Rights	53
2.263	Rights in Data	54
2.264	Ownership of Materials – Deleted – N/A	54
2.270	State Standards	54
2.271	Existing Technology Standards – Deleted – N/A	54
2.272	Acceptable Use Policy – Deleted – N/A	54
2.273	Systems Changes – Deleted – N/A	54
2.280	Extended Purchasing	54
2.281	MIDEAL – Deleted – N/A	54
2.282	State Employee Purchases – Deleted – N/A	54
2.290	Environmental Provision – Deleted N/A	54
2.300	Other Provisions	54
2.311	Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude	
	Made Materials	54
Attachment A – Pricing		55
Attachment B – Minimum Transportation Provider Qualifications		56
Attachment C – BAM 825 Link		57



DEFINITIONS

24x7x365 means 24 hours a day, seven (7) days a week, and 365 days a year (including the 366th day in a leap year).

Additional Service means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

Audit Period means the seven (7) year period following Contractor's provision of any work under the Contract.

Bidder(s) are those companies that submit a proposal in response to this RFP.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00 a.m. EST through 5:00 p.m. EST unless otherwise stated.

Blanket Purchase Order is an alternate term for Contract.

CCI means Contract Compliance Inspector.

Days means calendar days unless otherwise specified.

Deleted – N/A means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

Deliverable means physical goods and/or services required or identified in a Statement of Work.

DTMB means the Michigan Department of Technology Management and Budget.

Environmentally Preferable Products means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to: those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

Hazardous Material means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

HIPPA means Health Insurance Portability and Accountability Act.

Incident means any interruption in any function performed for the benefit of a Plan Sponsor.

Key Personnel means any personnel identified in **Section 1.031** as Key Personnel.

New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.

Ozone-depleting Substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

Post-Consumer Waste means any product generated by a business or consumer which has served its intended end use; and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.



Post-Industrial Waste means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

Recycling means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

Reuse means using a product or component of municipal solid waste in its original form more than once.

RFP means a Request for Proposal designed to solicit proposals for services.

Services means any function performed for the benefit of the State.

SLA means Service Level Agreement.

Source Reduction means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

State Location means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

Subcontractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

Unauthorized Removal means the Contractor's removal of Key Personnel without the prior written consent of the State.

Waste Prevention means source reduction and reuse, but not recycling.

Pollution Prevention means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

Work in Progress means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

Work Product refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by the Contract.

NEMT Specific Definitions

Non-emergency medical transportation services (NEMT) are defined as non-ambulance, non-emergency transportation to or from any covered medical services for the purpose of receiving treatment and/or medical evaluation.

Airplane - beneficiaries may travel by airplane if it is the most appropriate mode of transport. Air travel may be authorized because of distance or to facilitate arriving at the appropriate time for an extraordinary appointment.

Appropriate Method of Transportation - is the least expensive mode of transportation that best meets the physical and medical circumstances of a beneficiary requiring transportation to a medical service.



Ancillary Services - meals and lodging are part of the transportation package for participants when the beneficiary requires a particular medical service which is only available in another city, county or state and the distance and travel time warrants staying in that place overnight.

Appeal - the formal mechanism which allows a provider the right to appeal a decision.

Assistance - is when a beneficiary must be physically helped from within or into a building and/or from within or into the medical provider's site. Without such assistance, it would be unsafe or impossible for the beneficiary to reach the vehicle or the medical provider's site. The assistance is included as part of the transportation rate and may not be billed separately.

Attendant - is an employee of a transportation provider who in addition to the driver is required to assist in the transport of the beneficiary due to his/her physical, mental or developmental status.

Attending Practitioner - is defined as the practitioner (i.e., primary care practitioner or specialist) who provides care and treatment to the patient on an ongoing basis and who can certify the medical necessity for the transport. The attending practitioner is responsible for the ongoing care and management of the patient and can certify the non-ambulatory status of the patient and the medical need for NEMT transport, the type of certification and length of time the non-ambulatory status will remain unchanged. Attending practitioner also refers to a designated practitioner who is covering for the attending practitioner in his or her absence or a practitioner who is a member of the same group practice as the attending practitioner and in which it is customary for the members of the practice to cross cover for each other's patients. Practitioners must hold a valid and current license or certification to practice as at least one (1) of the following:

- (a) A doctor of medicine;
- (b) A doctor of osteopathy;
- (c) A doctor of podiatric medicine; or
- (d) An advanced practice nurse (APN).

Bridges Administrative Manual Section 825 (BAM 825) - the document containing the Michigan Medicaid Program policy for NEMT.

Contractorage - the service contracted to provide screening and authorization for NEMT service for Medicaid beneficiaries. The Contractorage also subcontracts with transportation providers who provide service for Medicaid beneficiaries.

Beneficiary - an individual who is eligible to receive assistance under the Medicaid Program.

Beneficiary Preference – the beneficiary requests a ride with a particular provider based on beneficiary's preference (for whatever reason) for that provider. The Contractorage will not make payment for transportation to a specific provider based solely on beneficiary or beneficiary/family preference or convenience.

Bus Passes and Tickets - many beneficiaries should be able to travel by bus. The Contractorage determines the type of ticket or pass ordered for the beneficiary by determining how many rides the beneficiary requires during a certain period and comparing the cost of the individual tickets to the cost of a pass for the period. Passes should only be authorized if the cost of individual tickets exceeds the cost of the pass otherwise tickets should be issued for the exact number of rides.

Cancel Call - is notification to the transportation provider, prior to the time the vehicle is en route to the pickup point, not to provide services to a beneficiary.

Companion - a person who accompanies a beneficiary, but who is not needed to provide personal assistance to the beneficiary.

Covered Medical Service - a medical service paid for by Medicaid. A beneficiary may be transported to any covered medical service, even if it is not included under their specific benefit package or a non-Medicaid provider if it is cost effective (prior authorization may be required).



Denial of Service - Beneficiaries may be denied a ride for the following reasons:

1. They are not Medicaid eligible,
2. They are not going to a covered medical service,
3. They have transportation resources available to them,
4. The beneficiary is currently suspended.

Eligible Beneficiary - will mean beneficiaries living in the Service Area who seek medically necessary transportation for Michigan Medicaid covered services under the terms of the agreement with the State.

Emergency Services – the health care and services provided for diagnosis and treatment of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of both the woman and her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. Emergency services are not the responsibility of the Contractor. Beneficiaries should call 911 to request emergency response.

Fair Hearing - the procedure by which a beneficiary may appeal a decision of the Medicaid Transportation Program.

Inter-City or Interstate Bus – (e.g. Greyhound or other carrier) may be used for beneficiaries who must travel long distances, but who are able to use the bus.

Least Costly Alternative - NEMT is limited to the most appropriate and least costly transportation alternative suitable for the beneficiary's medical condition.

Loaded Mileage - is the distance traveled by a motor vehicle while transporting a beneficiary from a pickup point to a drop-off point.

Lodging - when an overnight or longer stay is required, lodging may be paid for the beneficiary and one (1) additional person if the beneficiary is not the driver. Accommodations must be obtained at the most economical facility available. Resources such as Ronald McDonald Houses or facilities operated by the hospital must be used whenever possible.

Lowest Cost - the cost per trip that one (1) Transportation Provider charges as opposed to another of comparable level of service. The Contracting is obligated to choose the lowest cost, most appropriate level of service.

Meals - reimbursement for meals is available only for meals which occur during the time of the travel or the stay. Meals are permitted for the beneficiary and/or the person approved to stay with the beneficiary.

Medically Necessary - a service which is Medicaid eligible and reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions that endanger life, cause suffering or pain, result in illness or infirmity, threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective more conservative or substantially less costly course of treatment available or suitable for the beneficiary requesting the service. "Course of treatment" may mean mere observation or, where appropriate, no treatment at all.

No Show - is when a beneficiary fails to cancel a scheduled transportation service and the transport arrives at the pick-up point.

Private Vehicle - a motor vehicle owned or leased by the beneficiary, family member or friend of the beneficiary or an authorized individual acting as a volunteer which may be used to transport the beneficiary to and from covered medical services.

Public Transit - is fixed route transportation provided by public buses. When making a determination about whether or not a beneficiary can use the bus the following circumstances should be taken into consideration:



1. How far is the nearest bus stop from the beneficiary's residence?
2. Can the beneficiary reasonably get to the nearest bus stop?
3. Does the bus go reasonably near the beneficiary's medical provider?
4. Are there other circumstances which affect the beneficiary's ability to use the public bus such as having to walk a long distance with several small children, weather conditions, safety, etc.?

If in doubt about whether a beneficiary is physically able to use the bus, contact the medical provider for an opinion.

Related Expenses - reimbursement may be made for other expenses associated with travel, such as turnpike tolls and parking fees.

Rideshare - a rideshare participant is a beneficiary who is able to share a ride with another beneficiary because their route and time coincide.

Round-Trip Mileage - from the beneficiary's home to the medical facility is paid at the current mileage rate. If more than one (1) beneficiary is being transported, payment is approved for one (1) trip only. The round trip will be made over the shortest route.

Sufficient Capacity - means the Contractor has enough resources (providers) to handle the non emergency medical transportation needs of the Medicaid population. If the Contractor cannot meet the existing needs, then the Contractor must document the reason(s) for the deficiency and report it.

Taxi - beneficiaries without bus access and for whom no other less costly form of transport is available may be authorized to use a taxi. Beneficiaries who are physically unable to use a bus may also be authorized to use a taxi in the absence of alternate transportation. Advise beneficiaries that solicitation of tips by the driver is prohibited.

Train - beneficiaries may travel by train if they are going to a covered medical service out of the area and if train is the least costly, appropriate type of transportation.

Transportation Provider - any public, private or private non-profit organization or individual who has been designated by the Contractor to receive reimbursement for NEMT services at a negotiated rate, for NEMT provided as authorized by the Contractor. NEMT may include, taxi, wheelchair/Medivan, public transit, volunteers driving their own vehicles and beneficiaries, relatives or friends of beneficiaries eligible for mileage reimbursement for driving their own vehicles when there is an economic need for assistance with costs of driving.

Transportation Type - the type of transportation used to provide transportation services to beneficiaries. Types may include, but are not limited to: public or private fixed route service, exclusive ride service or shared ride service.

Trip - transporting an eligible beneficiary to or from a medical service. If the transportation provider waits for the medical service to be delivered subsequent transportation of the beneficiary is a continuation of the original trip.

Unloaded Mileage - is the distance traveled by the motor vehicle to the point of pickup of the beneficiary and/or from the point of drop-off of the beneficiary. The transportation provider can only charge mileage when the beneficiary for whom the claim is submitted is physically in the vehicle. Mileage cannot be charged en route to the pickup point or en route from the drop-off.

Volunteer Transport - beneficiaries may be transported by volunteer programs. Some programs offer van transportation, including wheelchair equipped vehicles and others provide transportation by volunteer drivers using their own vehicles. Volunteer agencies often require advance notice in order to assure that a trip can be scheduled.

Waiting Time - is the time a vehicle is waiting at a medical provider's facility, to which the transportation provider transported the beneficiary, in order to transport the beneficiary to another destination, during the same trip.

Contract No. 071B1300036



Wheelchair Transport - wheelchair van transport is transportation provided by a wheelchair lift equipped vehicle for a beneficiary who uses a wheelchair. Transportation is a generally a "door to door" service. At times, an individual being transported must be picked up inside their residence and taken inside their destination (escort by the driver).



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This is a Contract for the Michigan Department of Community Health (MDCH) for a Contractor acting as the broker for and administering the Non-Emergency Medical Transportation (NEMT) program in Wayne, Oakland and Macomb counties. At this time, the Contract is for only Macomb, Oakland and Wayne counties, but the State reserves the right to expand the Contract to include additional counties if necessary. The Contractor will administer the program, assure NEMT to eligible Medicaid beneficiaries, establish a network of transportation providers, field beneficiary calls, verify beneficiary eligibility, approve and arrange for NEMT, provide reimbursement to the NEMT providers, establish provider record keeping requirements and track and report NEMT utilization.

1.012 Background

The MDCH is the single State agency that administers and supervises the Michigan Medicaid program in accordance with the Title XIX of the Social Security Act 1902 (a)(10)(A) and (e), 42 CFR (Code of Federal Regulations), MCL 400.106, 1984 PA 246. 42 C.F.R. Section 431.53 requires Medicaid agencies to assure necessary transportation for beneficiaries to and from covered benefit appointments. The Michigan Department of Human Services (DHS) determines eligibility for NEMT per agreement with MDCH.

In 2009, MDCH provided Fee-For-Service (FFS) Medicaid coverage for approximately 540,756 NEMT eligible individuals across all 83 Michigan counties and approximately 198,098 of those were in Macomb, Oakland and Wayne counties. There are approximately 1,049,381 health plan eligibles in all 83 Michigan counties and 452,116 in Macomb, Oakland and Wayne counties covering approximately 14,000,000 miles.

1.020 Scope of Work and Deliverables

1.021 In Scope

The Contractor will administer the NEMT program as well as work with the MDCH to establish and maintain a progressive NEMT program. The Contractor will work with MDCH to:

- Administer the NEMT program.
- Assure NEMT to eligible Medicaid beneficiaries in Wayne, Oakland and Macomb counties.
- Offer current NEMT providers the opportunity to participate.
- Set up a call center to field beneficiary calls so that transportation can be provided to eligible Medicaid beneficiaries.
- Verify that the beneficiaries are eligible to receive NEMT prior to approving and arranging for NEMT.
- Reimburse NEMT providers at least at the current Michigan Medicaid NEMT rates.
- Establish provider record keeping requirements and set up a database to track the MDCH NEMT utilization.

MDCH will work with the Contractor to provide a process for obtaining verification of Medicaid NEMT eligibility. The Contractor will be able to verify eligibility for transportation services utilizing the Community Health Automated Medicaid Processing System (CHAMPS) Eligibility Inquiry and/or the Health Insurance Portability & Accountability Act of 1996 (HIPAA) 270/271 (Eligibility Inquiry/Response) transaction. The Contractor will not be charged for eligibility verification requests.

The Contract includes coverage of NEMT for clients that are dually eligible for Children's Special Health Care Services and Medicaid (Title V / Title XIX).

The Contractor will be assigned a provider ID number that will allow access to this system. In addition, the Contractor can sign up to use webDENIS, which is also free for enrolled providers. WebDENIS is Blue Cross/Blue Shield's web-based verification system which providers can use to access the Medicaid eligibility database. Access information can be obtained on the MDCH website at the following link: http://www.michigan.gov/mMDCH/0,1607,7-132-2945_5100-57088--,00.html



NEMT is a limited service for beneficiaries assigned to a managed care organization. NEMT is limited to transportation for community mental health, dental and substance abuse services for Medicaid Managed Care enrollees. Clients who are not Medicaid eligible, beneficiaries who do not reside in Wayne, Oakland or Macomb counties, and any other services not specifically described in the Contract would be considered out of the scope of the Contract.

1.022 Work and Deliverable

Contractor must provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

A. Programs

1. The Contractor will develop materials for beneficiaries for prior approval from MDCH, which include outreach and general information about the NEMT based on policy in the MDCH Bridges Administrative Manual (BAM) section 825 (see Attachment C), information on how to contact the Contractor and schedule service, information regarding your policies and procedures and the complaint process. Information must be written at a sixth grade level and should be available (at least) in English, Spanish and Arabic. Sufficient material must be produced to respond to all information requests. The Contractor will work with MDCH Medicaid staff regarding development and publication of all printed materials to be distributed by Medicaid.
2. The Contractor will provide beneficiaries, county DHS offices and Medicaid enrolled providers information about this program. Information must be made available to others upon request. The information must describe availability of NEMT services, eligibility for these services, the authorization process and how to access and use these services properly. MDCH will approve all NEMT written materials prior to their distribution.
3. The Contractor will assure necessary NEMT for services covered by Michigan Medicaid for beneficiaries who do not participate with a managed care plan and have no other means of transportation and who reside in Wayne, Oakland and Macomb County. NEMT must be provided only for those medical services that are a benefit of Medicaid. NEMT must be available to obtain medical evidence or receive Medicaid covered service from any Medicaid enrolled provider. This includes the need for chronic and ongoing treatment (i.e. dialysis treatment), prescriptions, medical supplies and/or one (1) time, occasional and ongoing visits for medical care, the need for methadone treatment, need for travel outside the normal service delivery area (such as out of state transportation where medically appropriate), need for overnight stays (including meals and lodging), need for commercial non-emergency transport vehicle (wheelchair lift/Medivan), need for attendant (parent, caretaker, etc). The Contractor must assure that it has approved and arranged for the most appropriate transportation for the beneficiary's condition.
4. The Contractor must evaluate and approve/deny requests and provide NEMT for Medicaid services not covered by the Managed Care Plans for the managed care population. Dental, substance abuse and community mental health services are not provided by Health Maintenance Organizations (HMOs). HMOs are required to assure a beneficiary's need for transportation for HMO provided services only, including referrals for medical services from specialists or out-of-state medical providers.
5. The Contractor must assure that all eligible beneficiaries have access to the appropriate type of NEMT. The type of transportation available may vary by region because of availability and/or a rural, rather than an urban location.
6. The Contractor must have an understanding of Centers for Medicare and Medicaid Services (CMS) requirements regarding assurance of NEMT.
7. The Contractor must have a system to compute the cost of the beneficiaries' medical transportation when verification is received that NEMT has been provided.
8. The Contractor must have a system to calculate the total number of round trips traveled from the beneficiary's home to the medical service destination(s) and back to the beneficiary's home.



9. The Contractor must have a process for notifying a beneficiary of denial for NEMT services. If reimbursement for NEMT is denied, the beneficiary must be notified of denial, including the reason for denial and the right to appeal the decision by written notice.
10. The Contractor must have a plan to provide NEMT to parents, guardians or spouses of beneficiaries receiving Medicaid services who by virtue of age and/or condition need to be accompanied or who may need NEMT to be with a Medicaid beneficiary while the beneficiary is receiving Medicaid covered services.
11. The Contractor must have a plan to provide NEMT services to eligible beneficiaries to entities that do not charge for care such as Veterans Administration (VA) hospitals, St. Jude Children's Research Hospital in Memphis, Tennessee and Shriner Hospital where transportation services may be to out-of-state locations.
12. The Contractor must provide applicants and other requesters of NEMT written information explicitly acknowledging that Medicaid must assure transportation for beneficiaries to and from Medicaid service providers for Medicaid covered services.
13. The Contractor must implement the policy document that must be followed: BAM 825 in the MDCH manuals. BAM 825 has an exception policy that can be used to request an exception (see link in Attachment C).
14. The Contractor must assess a beneficiary's need for NEMT services.
15. The Contractor must have materials, such as pamphlets, flyers, radio/TV spots, direct mailings, etc., which will be provided to inform beneficiaries of the availability of their services.
16. The Contractor must have a process, system and criteria for determining the appropriate mode of transportation, what NEMT provided to assign it to, and must insure that the transport is completed in a timely, efficient and appropriate manner.
17. The Contractor must gather and maintain information for, and examine and respond to, changes in member populations and member needs to insure an adequate supply of the necessary types of vehicles and transportation services.

B. Provider Network

The Contractor must establish a comprehensive network of NEMT providers to deliver NEMT to Medicaid beneficiaries. The Contractor must give current NEMT providers the opportunity to participate if they meet the criteria specified in the Contract for Michigan Medicaid in Wayne, Oakland and Macomb counties as the basis for establishing their provider network. The provider network must include diverse modes of available transportation, as outlined in the definitions. The provider network must also be capable of serving beneficiaries from a variety of cultural and geographic areas. The provider network must be responsive to the cultural, language and physical and/or medical needs of the beneficiaries. The provider qualifications must, at a minimum, meet those outlined in Attachment B. The Contractor must have sufficient capacity available through agreements with transportation providers and other arrangements (such as public bus and train service, free services or reduced cost services, volunteers or gas reimbursement) to meet the Medicaid beneficiaries' NEMT needs.

1. The Contractor must recruit transportation providers that employ courteous, safe, quality strategies in the delivery of NEMT.
2. The Contractor must educate transportation providers regarding rules, regulations, policies, practices and laws relating to the delivery of NEMT to eligible Medicaid beneficiaries.
3. The Contractor must ensure that any Subcontractor providing transportation services carry automobile liability insurance with a minimum of one (1) million dollars per occurrence.
4. The Contractor must negotiate rates or use other strategies to ensure that the most appropriate NEMT is provided. The reimbursement rates used must, at a minimum, equal the current Medicaid NEMT rates.



5. The Contractor must assure that agreements with providers meet the minimum requirements.
6. The Contractor must arrange for or provide NEMT for routinely scheduled trips, non-routinely scheduled trips and unscheduled trips. The Contractor must approve and arrange for NEMT through Provider contracts with public, not-for-profit, for-profit organizations and individual qualified operators, including relatives.
7. The Contractor must ensure that all beneficiaries, including non-English speaking beneficiaries, can access NEMT.
8. The Contractor must assure a culturally diverse provider network that is responsive to the varied needs of the beneficiaries.
9. The Contractor must ensure they will refrain from contracting with providers who the Department has terminated from the Medicaid program or NEMT program for good cause.
10. The Contractor must ensure that they will not provide their own vehicles and drivers through the services of any transportation company in which they have an ownership interest.
11. The Contractor must establish a network of independent transportation providers to deliver transportation and negotiate individual service delivery rates with each qualified transportation entity.
12. The Contractor must make payments to each transportation provider based on authorized services rendered.

C. Call Center

The Contractor must establish and maintain an adequately staffed, toll-free, telephone call center to respond to requests and questions from beneficiaries, beneficiary designated representatives, providers, Medicaid technicians and MDCH. The call center must field requests for transportation services, provide information about transportation services and handle calls to register complaints. The call center must be physically located in the geographic area served by the Contract. Beneficiaries must not incur a charge for placing a call. The Contractor must maintain a dedicated staff to perform the requirements. Beneficiaries must be able to schedule transportation as many as 14 days in advance and as few as same-day-service. Professional, prompt and courteous customer service must be a high priority.

1. The Contractor must train call center staff and respect a caller's right to privacy and confidentiality.
2. The Contractor must ensure that eligible beneficiaries are able to schedule transportation as many as 14 days in advance and as few as same-day-service.
3. The Contractor must maintain a properly functioning local and toll-free telephone number available, at a minimum, during regular business hours (i.e. 8:00 a.m. through 5:00 p.m. Monday through Friday) with a preference of 24 hours, seven (7) days a week with voice mail, TTY and a facsimile number; and must have the ability to handle inquiries from non-English speaking beneficiaries and those with hearing and speech impairments.
4. The Contractor must ensure that they have sufficient/appropriate staff to handle all calls and act as troubleshooters and problem solvers for transportation related questions (and any other issues that may arise).
5. The Contractor must educate beneficiaries who habitually call after regular working hours and leave messages requesting transportation.
6. The Contractor must physically locate the call center in the geographic area served by the Contract.
7. The Contractor must process all incoming telephone inquiries for NEMT in a timely (within 24 hours) and responsive manner. The Contractor must have the capability to ensure that the communication and language needs of beneficiaries are addressed.



8. The Contractor must ensure that beneficiaries with emergency requests are referred or transferred to 911 or an appropriate local emergency or ambulance service.
9. The Contractor must be in compliance with HIPAA.

D. Schedule, Assign and Dispatch Trips

The Contractor must utilize scheduling and dispatching software that has been proven effective in a Medicaid NEMT environment to schedule, assign and dispatch trips. The Contractor must employ a technique to schedule beneficiary trips once they are authorized and must ensure that trip assignments are efficient. The scheduling system must be capable of accommodating advanced reservations, subscription service and requests for urgent service. The software should track scheduling tasks for reporting purposes as identified in Section 1.302. The Contractor must determine the most appropriate mode of transportation to meet the beneficiary's medical need, including any special transport requirements for medically fragile or physically/mentally challenged beneficiaries using the considerations identified.

PRIOR TO APPROVING AND ARRANGING FOR NEMT, THE CONTRACTOR MUST VERIFY THAT THE BENEFICIARY IS ELIGIBLE TO RECEIVE NEMT.

1. When utilizing public transportation, the Contractor must establish procedures for timely distribution of tokens/passes to beneficiaries so that the beneficiaries are present at authorized medical appointments on time. The Contractor must establish adequate monitoring procedures to validate that the tokens/passes were used for authorized NEMT.
2. The Contractor must arrange transportation into and out of the State when appropriate for eligible beneficiaries (the Contractor will not be responsible for arranging transportation for beneficiaries who reside outside of Michigan).
3. The Contractor must prevent excessive multi-loading of vehicles and excessively long trips.
4. The Contractor must maintain scheduling and dispatching software that has been proven effective in a Medicaid NEMT environment to schedule, assign and dispatch trips.
5. The Contractor must employ a technique to schedule beneficiary trips once they are authorized and ensure that trip assignments are efficient.
6. The Contractor must ensure that the scheduling system is capable of accommodating advanced reservations, subscription service and requests for urgent service.
7. The Contractor must ensure that the chosen scheduling and dispatching software tracks scheduling tasks for reporting purposes (see Section 1.042 for specific requirements).
8. The Contractor must determine the most appropriate mode of transportation to meet the beneficiary's medical need, including any special transport requirements for medically fragile or physically/mentally challenged beneficiaries using the considerations identified in BAM 825.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

The Contractor must identify where Contractor staff will be physically located during the Contract performance.

- Administrator/Director/General Manager: Jason Harbitz (Michigan)
- Vice President of Operations: Chris Echols (Georgia)

Pursuant to HIPAA of 1996, the Contractor must protect the confidentiality of all Medicaid beneficiaries and other materials that are maintained in accordance with the Contract. The Contractor must execute a HIPAA Business Associate agreement.



Except for officially approved purposes, directly connected with the administration of the Contract, no information about (or obtained from) any beneficiary in possession of the Contractor will not be disclosed to any party other than DHS or MDCH in a form that identifies the beneficiary, without prior written consent of the beneficiary or a minor's parent or guardian. The Contractor must modify and maintain comprehensive confidentiality policies and procedures as approved by the MDCH.

The Contractor must provide sufficient administrative and organizational staff to perform, at a minimum, the functions of the positions described as follows. The Contractor must ensure that all staff has appropriate training, education, experience, liability coverage and orientation to fulfill the requirements of the positions. The Contractor must also provide adequate clerical and support staff to assist in the performance of these functions:

- Administrator/Director: The Contractor must have a full time administrator/director with clear authority over general administration and implementation of the provisions and requirements set forth herein.
- Quality Manager must implement and oversee all aspects relating to quality of services provided by the Contractor's staff and Subcontractors. Additionally, the Quality Manager will be responsible for the resolution, tracking and reporting of all complaints and incidents as described herein; ensuring that beneficiary satisfaction surveys are completed as required; and monitoring and directing quality improvement when indicated.
- Customer Service Manager will oversee all aspects relating to customer service operations including determining the appropriateness of NEMT requests, requests for specialized transportation including, but not limited to: stretcher van, out-of-state travel, transplant related issues, special circumstance transports, attendants and dialysis patients.
- Compliance Manager will perform compliance activities to ensure internal and Subcontractor compliance with the provisions and requirements stated herein.
- Customer Service Representative(s) must coordinate communications with beneficiaries and arrange appropriate NEMT services.

1.040 Project Plan

1.041 Project Plan Management

A. Quality Compliance

The Contractor must establish reasonable safety and quality standards for the provision of NEMT. Transportation providers must meet health and safety standards for vehicle maintenance, operation and inspection; driver qualifications and training and the delivery of courteous, safe and timely transportation services. A non-emergency equipped vehicle (such as a van taking patients to doctor appointments, etc.) is a limousine and the carrier must have a Limousine Certificate of Authority.

1. The Contractor must establish a process for tracking and monitoring NEMT utilization by beneficiaries and providers to detect patterns of abuse or misuse. Additionally, the Contractor must notify the Department of potential fraud, abuse or misuse of NEMT.
2. The Contractor must establish and maintain standardized, approved written procedures for handling all complaints, including documentation requirements. Additionally, the Contractor must notify beneficiaries of the process to use when transportation is refused.
3. The Contractor must analyze complaint data to identify common themes and implement system improvements.
4. The Contractor must educate and manage beneficiaries who are chronically late, "no-shows" or abusive. The Contractor must document no-shows and abusive behavior in the transportation database; and their process of reporting beneficiaries who misuse emergency services that require NEMT to or from the medical service to the Department's beneficiary over-utilization program.



B. Issue Management

1. **Monitor and Manage Complaints:** The transportation subcontractors and clients will have online access to the electronic complaint tracking log, using the Contractor's system(s). Upon request, plan personnel will be given logins and have review access to the following:
 - Complaint editor to monitor specific complaints
 - Complaint summary reports to verify satisfaction levels
 MDCH will have its own Web-based system to access complaints 24x7x365 days a year with real-time data.
2. **Complaints Escalations Process:** The Contractor will have written policies and procedures outlining the complaint, appeal, and escalation processes required to manage issues of concern presented to the Contractor by any individuals or group, including the State. If the complainant is not satisfied with the results of the first- and second-level reviews conducted by staff in the Contractor's local operations office, along with any necessary and appropriate corrective action, a request for a second review can be made verbally or in writing. The Reporting Manager will enter the request for appeal into the Contractor's system, and the issue will be escalated to the Administrator/Director/General Manager, who will review the complaint and all related documentation. Within 72 hours of receiving the request to appeal, the Administrator/Director/General Manager will respond in writing to the complainant. This communication will outline the results of the second level review and any corrective actions that will be taken. The Contractor will also inform MDCH of the results of the General Manager's review. If MDCH has complaints concerning the Contractor's contract compliance or staff behavior, these complaints will be personally handled by the Administrator/Director/General Manager in accordance with MDCH-specified procedures. Any MDCH complaints about the Administrator/Director/General Manager will be handled by the Vice President of Operations assigned to the MDCH NEMT contract. The Contractor will automatically assign all complaints a tier designation, in accordance with the complaint type selected at the time of entry. This tiered classification system is used to code the severity of each complaint.

C. Change Management

If the need for a change to the project plan or provisions is identified by either the State or the Contractor, a meeting is to be called by the initiating party to negotiate the terms of the change. Any change that requires changes to the Contract scope and/or language must be processed through DTMB.

1.042 Reports

The Contractor must submit accurate and complete reports to MDCH quarterly with an annual rollup report. Reports must include, but not be limited to the following:

- Transportation Request Report-summarizing all requests for transportation, authorizations and denials by mode
- Transportation Trip Summary-summarizing all trips by mode, age and gender, particularly noting percentage increase in public transportation ridership
- Trip Report-listing all completed trips. The data elements must include beneficiary ID number, date of trip, mode, age, gender, address of pick-up and drop-off
- Miles per trip/per beneficiary report
- Beneficiary satisfaction survey
- Complaint and Appeal Summary
- On-time report, no-show report, missed trip report.

The Contractor must maintain a database sufficient to meet the needs of the MDCH NEMT program and to provide the Department with quality program management data. The database must be backed up on a daily basis and the Contractor will be responsible for all programming functions and costs associated with the maintenance of this database. The database must track beneficiary identification and utilization information.

1. The Contractor must track utilization data for each call, including the beneficiary's Medicaid identification number, name, address, phone number, primary language, special needs and required mode.



2. The Contractor must maintain person-level computerized data on beneficiaries including determination of beneficiary eligibility, availability of suitable modes of transportation, necessity of trip, special needs and results of NEMT request.
3. The Contractor must maintain a daily computerized Trip Log that includes the requester name (if different), date/time request, date/time of medical appointment, mode of transportation authorized, denial reason, justification of mode authorized, scheduled pick-up/drop-off time, actual pick-up/drop-off time, escorts, pick-up and drop-off location, subcontracted provider assigned and trip mileage.
4. The Contractor must accommodate functions for daily operations, service authorization, trip scheduling, provider reimbursement and Department monitoring.
5. The Contractor must pull data by beneficiary ID number, name, gender, mode of transportation, date or other identifier to create a history of approvals and denials.
6. The Contractor must support the Department by tracking NEMT utilization and trends, identifying potential NEMT opportunities for improvement and maintaining an information database.

1.050 Acceptance

1.051 Criteria

The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this SOW:

Acceptance will be based on the PM's / CCI's approval of the reports required in Section 1.042.

1.052 Final Acceptance – Deleted – N/A

1.060 Pricing

1.061 Pricing

For authorized Services and Price List, see Attachment A.

(a) Fixed Prices for Services/Deliverables

(b) Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under the Contract is subsequently reduced by the State, the parties will negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

(c) Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under the Contract, the State will not be obligated to pay any amounts in addition to the charges specified in the Contract.

Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See www.michigan.gov/dtmb for current rates.

1.062 Price Term

Prices quoted are the maximum for a period of 365 days from the date the Contract becomes effective.

Prices are subject to change at the end of each 365-day period. Such changes must be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. Purchasing Operations reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).



Purchasing Operations also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes must be firm for the remainder of the Contract period unless further revised at the end of the next 365-day period. Requests for price changes must be RECEIVED IN WRITING AT LEAST 10 DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the Contract may be cancelled. **The Contractor remains responsible for performing according to the Contract terms at the Contract price for all orders received before price revisions are approved or before the Contract is cancelled.**

1.063 Tax Excluded from Price

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback – Deleted – N/A

1.070 Additional Requirements

1.071 State Staff, Roles and Responsibilities

Marilyn Russo, MSA, MDCH, will supervise the Project Manager (PM) / CCI in the execution of the Contract. If the PM is unable to resolve an issue between the Contractor and the State, the issue should be elevated to the Medicaid State Administrative Manager who will issue, in writing, their final decision, in accordance with BAM 825 (See link in Attachment C) and the terms of the Contract. All decisions will be issued in writing to all interested parties.

1.072 Other Roles and Responsibilities

MDCH will provide the Contractor with a MDCH designated voice response system. This system is a point of sale device provided to the Contractor by MDCH. MDCH will provide the Contractor with training on how to use this device. MDCH will be responsible for all maintenance of this device and all issues involving this device. MDCH will identify a contact person who will serve as a resource person.

1.073 Compensation and Payment

Payment under the Contract will be made as follows:

- a. Transportation fees to the network providers will be at least at the current rates.
- b. Contractor may add an administrative fee to manage the MDCH NEMT program for MDCH.

1.074 Implementation Period

The period of October 1, 2010 through November 30, 2010 will be for implementation and transition for the Contractor; no payment will be made to the Contractor during this period. The Contractor must begin providing all Services, without interruption, on December 1, 2010.



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period from October 1, 2010 through November 30, 2012. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to one (1) additional one (1) year period.

2.003 Legal Effect

Contractor must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under the Contract, until Contractor is notified in writing that the Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing the Contract, are incorporated in their entirety and form part of the Contract.

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor must furnish all such materials and services as may be ordered during the Contract period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 Headings

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

**2.008 Form, Function & Utility**

If the Contract is for use of more than one (1) State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract and, if one (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration**2.021 Issuing Office**

The Contract is issued by DTMB, Purchasing Operations and MDCH (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within Purchasing Operations for the Contract is:

Lance Kingsbury
DTMB – Purchasing Operations
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
E-mail: kingsburyL@michigan.gov
Phone: 517-241-3768

2.022 Contract Compliance Inspector

After DTMB-Purchasing Operations receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with MDCH, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DTMB Purchasing Operations.** The CCI for the Contract is:

Penny Saites, Manager
Purchasing Section
Michigan Department of Community Health
Lewis Cass Building
Lansing, Michigan 48913
E-mail: SaiteSp@michigan.gov
Phone: 517-335-5096
Fax: 517-241-4845



2.023 Project Manager

The following individual will be responsible for monitoring and managing the daily operations under the Contract:

Linda Ramey
Michigan Department of Community Health
400 S. Pine Street
Lansing MI 48909
E-mail: rameyL@michigan.gov
Phone: 517-335-5198

2.024 Change Requests

The State reserves the right to request, from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice").
- (b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DTMB-Purchasing Operations.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the Contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon written notice.

**2.027 Relationship of the Parties**

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be deemed to be an employee, agent or servant of the State for any reason. Contractor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties must not unreasonably delay, condition, or withhold the giving of any consent, decision, or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.

(c) If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions**2.031 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to this RFP and Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with this RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 Contract Distribution

Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

2.033 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

**2.035 Future Bidding Preclusion**

Contractor acknowledges that, to the extent the Contract involves the creation, research, investigation or generation of a future RFP; it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under the Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions**2.041 Fixed Prices for Services/Deliverables**

Each Statement of Work or Purchase Order issued under the Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under the Contract is subsequently reduced by the State, the parties must negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under the Contract, the State must not be obligated to pay any amounts in addition to the charges specified in the Contract.

2.044 Invoicing and Payment – In General

(a) Each Statement of Work issued under the Contract must list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

2.045 Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services must be pro-rated for any partial month.

**2.046 Antitrust Assignment**

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of the Contract.

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one (1) party against the other arising from unsettled claims or failure by a party to comply with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

2.050 Taxes**2.051 Employment Taxes**

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two (2) or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management**2.061 Contractor Personnel Qualifications**

All persons assigned by Contractor to the performance of Services under the Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of the Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for the Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

(a) The Contractor must provide the CCI with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.



(c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

(e) The Contractor must notify the CCI and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract must perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel must, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification

Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.066 Cooperation with Third Parties

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under the Contract with the requests for access.

**2.067 Contractor Return of State Equipment/Resources**

The Contractor must return to the State any State-furnished equipment, facilities, and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.068 Contract Management Responsibilities

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them.

Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor**2.071 Contractor Full Responsibility**

Contractor has full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under the Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation

Contractor must not delegate any duties under the Contract to a Subcontractor unless DTMB-Purchasing Operations has given written consent to such delegation. The State reserves the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under the Contract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

**2.075 Competitive Selection**

The Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.080 State Responsibilities**2.081 Equipment**

The State must provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and, unless agreed otherwise by the parties in writing, must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor must not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security**2.091 Background Checks**

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel must agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements – Deleted N/A**2.100 Confidentiality****2.101 Confidentiality**

Contractor and the State each acknowledge that the other possesses, and will continue to possess, confidential information that has been developed or received by it.



As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under the Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.105 Respective Obligations

The parties' respective obligations under this Section must survive the termination or expiration of the Contract for any reason.

2.110 Records and Inspections

**2.111 Inspection of Work Performed**

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For seven (7) years after the Contractor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, information pertaining to the Contract, and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor must respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) invoices. If a balance remains after four (4) invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10 percent, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties**2.121 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.



(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of the Contract. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two (2) days of learning about it.

(h) If any of the certifications, representations or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to the DTMB, Purchasing Operations.

(i) Neither Contractor nor any Affiliates, nor any employee of either has accepted or wil accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(j) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, Contractorage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract.

(k) The prices proposed by the Bidder were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by the Bidder to any other Bidder; and no attempt was made by Bidder to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(l) All financial statements, reports, and other information furnished by Bidder to the State as part of its response to the RFP or otherwise in connection with the award of the Contract fairly and accurately represent the business, properties, financial condition and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

(m) All written information furnished to the State by or behalf of Contractor in connection with the Contract, including its bid, it true, accurate, and complete and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.



(n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.122 Warranty of Merchantability

Goods provided by Contractor under this agreement must be merchantable. All goods provided under the Contract must be of good quality within the description given by the State, must be fit for their ordinary purpose, must be adequately contained and packaged within the description given by the State, must conform to the agreed upon specifications, and must conform to the affirmations of fact made by the Contractor or on the container or label.

2.123 Warranty of Fitness for a Particular Purpose

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

2.124 Warranty of Title

Contractor must, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under the Contract, must be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty – Deleted – N/A

2.126 Equipment to be New – Deleted – N/A

2.127 Prohibited Products – Deleted – N/A

2.128 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of the Contract.

2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of Services under the terms of the Contract, whether the Services are performed by the Contractor, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under the Contract.

All insurance coverage's provided relative to the Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in the Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in the Contract must be issued by companies that have been approved to do business in the State. See www.michigan.gov/deleg.



Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked ☒ below:

- ☒ 1. Commercial General Liability with the following minimum coverage:
- \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 - \$2,000,000 Products/Completed Operations Aggregate Limit
 - \$1,000,000 Personal & Advertising Injury Limit
 - \$1,000,000 Each Occurrence Limit

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 2. If a motor vehicle is used to provide services or products under the Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- ☒ 4. Employers liability insurance with the following minimum limits:
- \$100,000 each accident
 - \$100,000 each employee by disease
 - \$500,000 aggregate disease

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under the Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DTMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.**



All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies **MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, DTMB. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three (3) years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under the Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of the Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

2.143 Employee Indemnification

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its Subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its Subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its Subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.



In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under the Contract.

2.145 Continuation of Indemnification Obligations

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under the Contract.

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.



(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach.

The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The State may terminate the Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50 percent more than the prices for the Service/Deliverables provided under the Contract.

(c) If the State chooses to partially terminate the Contract for cause, charges payable under the Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates the Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in the Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate the Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

**2.154 Termination for Non-Appropriation**

(a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must terminate the Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate the Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25 percent or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State must pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates the Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables.



Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

Any termination of the Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

2.160 Termination by Contractor

2.161 Termination by Contractor

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate the Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Contract, (ii) breaches its other obligations under the Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 180 business days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**.

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor must notify all of Contractor's subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under the Contract. The Contractor must provide the State with asset management data generated from the inception of the Contract through the date on which the Contractor is terminated in a comma-delineated format unless otherwise requested by the State.



The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under the Contract. This must include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment must conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

**2.191 In General**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one (1) party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

**2.201 Nondiscrimination**

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.204 Prevailing Wage – Deleted – N/A**2.210 Governing Law****2.211 Governing Law**

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.212 Compliance with Laws

Contractor must comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability**2.221 Limitation of Liability**

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.



2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of the Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
 - (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB-Purchasing Operations.
- (2) Contractor must also notify DTMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor must also notify DTMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

Contractor and/or all Subcontractors involved in the performance of the Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of the Contract.

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate the Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or



- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs) – Deleted – N/A

2.243 Liquidated Damages – Deleted – N/A

2.244 Excusable Failure

Neither party will be liable for any default, damage, or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. but the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.



The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

Unless otherwise specified by the State within an individual order, the following must be applicable to all orders issued under the Contract.

- (a) Shipment responsibilities - Services performed/Deliverables provided under the Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates must be specified on the individual purchase order.
- (b) Delivery locations - Services must be performed/Deliverables must be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage. Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection

2.252 Delivery of Deliverables

Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables must be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.253 Testing

- (a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor must first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.
- (b) If a Deliverable includes installation at a State Location, then Contractor must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State is entitled to observe or otherwise participate in testing.



2.254 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection of interim and intermediate Deliverables and collaboration on key decisions.

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

(d) The State must approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three (3) opportunities (the original and two (2) repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five (5) Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts must be made at no additional charge.



Upon receipt of a corrected Deliverable from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts must be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

2.257 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State delivers to the Contractor a notice of deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts must be made at no additional charge.

Upon receipt of a corrected Deliverable from the Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

2.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

**2.263 Rights in Data**

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State must not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials – Deleted – N/A**2.270 State Standards****2.271 Existing Technology Standards – Deleted – N/A****2.272 Acceptable Use Policy – Deleted – N/A****2.273 Systems Changes – Deleted – N/A****2.280 Extended Purchasing****2.281 MIDEAL – Deleted – N/A****2.282 State Employee Purchases – Deleted – N/A****2.290 Environmental Provision – Deleted N/A****2.300 Other Provisions****2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials**

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

**Attachment A – Pricing**

Payment under the Contract will consist of a fixed reimbursement rate per service with a percentage of the overall payment for administrative costs

Service	Reimbursement
Lodging:	
1. Any Ronald McDonald House	\$12.50 per day
2. Other	\$41.25 per day
Meals:	
1. Meals when staying at a Ronald McDonald	\$7.00 per day
2. Meals when staying at other subsidized housing	\$12.00 per day
For day trips and overnight stays/multiple night stays when not in a subsidized facility:	
1. Breakfast	\$4.50
2. Lunch	\$5.50
3. Dinner	\$11.75
Parking Fees/Tolls	
Mileage:	
1. Bus Transportation (City/Intercity)	\$2.00 per person actual fare
2. Personal Vehicle	\$0.24 per mile
3. Volunteer	\$0.399 per mile
4. Commercial, nonprofit agencies, medical facilities, local health departments, taxis, etc.	\$0.27 per mile
Special Transportation Allowances (wheelchair left/Medivan):	
1. Mileage	\$0.27 per mile
2. Base Rate	\$30.00
3. Attendant	\$10.00 per attendant

The administrative fee for the Contract is based on the Department's estimated annual costs for Non-Emergency Transportation Services for Macomb, Oakland and Wayne Counties.

Calculation Chart					
Estimate Total For All Reimbursements per Year			Rate		Administrative Fee
Year 1	\$5,000,000.00	X	12.10%	=	\$605,000.00
Year 2	\$5,000,000.00	X	11.70%	=	\$585,000.00
Total Two (2) Year Estimated Contract Amount:					\$1,190,000.00

**Attachment B – Minimum Transportation Provider Qualifications****General:**

- Age 21 or older
- Read and speak English
- Valid driver's license appropriate of the class of vehicle operated
- Physically capable of safely operating the type of motor vehicle being driven and associated equipment
- Knowledge of the geography and conditions of the required driving environment
- Pass Criminal background check
- Clean / safe driving record
- Adequate liability and vehicle insurance
- Clean, well-groomed and neat in appearance
- Language competency (ability to communicate in the primary language of the beneficiaries they transport)
- Be culturally aware / demonstrate knowledge of the cultures in the areas they operate and how they will accommodate any special transportation requirements that result from them

Commercial:

- Must maintain all certifications and licenses for drivers and vehicles required by all public (federal, State or local) transportation laws, regulations, ordinances that apply to the transportation provider
- Adhere to all laws, rules, and regulations applicable to transportation providers of that type, including those requiring liability insurance
- Comply with the requirements of the American with Disabilities Act (ADA)
- Operate vehicles that meet the safety and medical needs of the beneficiary

Non-Commercial: (Volunteer, etc.)

- Have all licenses and certifications required by the government to conduct business and /or operate the types of vehicles used to transport beneficiaries
- Adhere to all laws, rules, and regulations applicable to drivers and vehicles of the type used.
- A vehicle that meets the safety and medical needs of the beneficiary

Drivers:

- Possess a current valid state license appropriate for the vehicle(s) being operated
- Valid demonstration of previous driving record
 - no driving convictions OR
 - no more than two (2) convictions for moving violations in the last three (3) years
- Be trained in the operation of all vehicle equipment, first aid, CPR, emergency exits, fire extinguishers, wheelchair lifts, lockdowns, etc.
- Be trained in passenger handling techniques, wheelchair movement and securement, boarding/loading assistance, patient confidentiality and defensive driving
- Maintain a professional and courteous manner at all times
- Age 21 or older
- Be courteous, patient and helpful
- Be trained in first aid and CPR
- Be physically fit to drive (provide a signed statement from a licensed physician declaring that he / she does not have a medical condition, a physical condition, including vision impairment [not corrected] and/or a hearing impairment [not corrected] or a mental condition which could interfere with safe driving, safe passenger assistance, the provision of emergency treatment activity, or could jeopardize the health or welfare of patients being transported)
- Must have no prior convictions for a drug or alcohol-related offense in the last five (5) years
- Must have no convictions of any sexual crime or crime of violence
- Must have a pre-employment drug test



Attachment C – BAM 825 Link

This is a link to the section in the Department of Human Services Bridges Administrative Manual, Department Policy #825 regarding medical transportation:

<http://www.mfia.state.mi.us/olmweb/ex/bam/825.pdf>